

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

RONNIE GENE WADE,

Plaintiff,

v.

CIVIL ACTION NO. 2:05-cv-00289

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

In this action, filed under 42 U.S.C. §§ 401-433. 1381-1383f, the plaintiff seeks review of the final decision of the Commissioner of the Social Security Administration denying his applications for disability insurance benefits and supplemental security income. The case is presently pending before this court on cross motions for judgment on the pleadings [Docket 12 and 14].

This action was referred to the Honorable Judge Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On January 25, 2006, the Magistrate Judge submitted her *Findings and Recommendation* wherein she recommended that the court deny the plaintiff's motion for judgment on the pleadings, grant the defendant's motion for judgment on the pleadings, and affirm the final decision of the Commissioner. On February 2, 2006 the plaintiff filed objections to the Magistrate Judge's *Findings and Recommendation*.

Standard of Review

The Social Security Act states that “[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C.A. § 405(g) (West Supp. 1998). The Supreme Court has defined substantial evidence as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Further, “[i]t consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966).

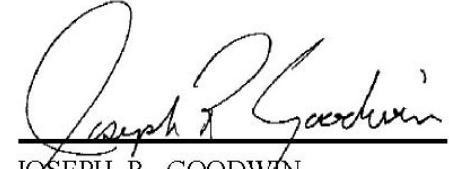
In reviewing the case for substantial evidence, the court does not re-weigh conflicting evidence, make determinations as to credibility, or substitute its own judgment for that of the Commissioner. *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). Rather, the court must adopt the Commissioner’s findings if there is evidence in support of such findings “to justify a refusal to direct a verdict were the case before a jury.” *Blalock v. Richardson*, 483 F.2d 773, 776 (4th Cir. 1972). “Where conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the Commissioner (or the Commissioner’s designate, the ALJ).” *Walker v. Bowen*, 834 F.2d 635, 640 (7th Cir. 1987). Thus, even if the court would have reached a different decision, it must nonetheless defer to the conclusions of the Administrative Law Judge (ALJ) if such conclusions are bolstered by substantial evidence and were reached through a correct application of relevant law. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987).

Analysis

The plaintiff makes four objections to the *Findings and Recommendation* of the Magistrate Judge. First, the plaintiff objects to the Magistrate's finding that substantial evidence supports the ALJ's decision that the plaintiff's back impairment does not meet or equal Listing 1.04(A). Second, the plaintiff objects to the Magistrate's finding that substantial evidence supports the ALJ's decision concerning functional limitations. Third, the plaintiff objects to the Magistrate's finding that the ALJ adequately considered the plaintiff's impairments and properly determined that the impairments did not meet or equal a listing. Finally, the plaintiff objects to the Magistrate's finding that substantial evidence exists which supports the ALJ's credibility determination and the adequacy of the hypothetical. The court has reviewed *de novo* those portions of the Magistrate Judge's *Findings and Recommendation* to which the plaintiff objects and **FINDS** that the objections lack merit. The court agrees with the Magistrate Judge's thorough analysis of these issues. Accordingly, the court **ADOPTS** the *Findings and Recommendation* of the Magistrate Judge, **DENIES** the plaintiff's motion for judgment on the pleadings [Docket 12], **GRANTS** the defendant's motion for judgment on the pleadings [Docket 14], and **AFFIRMS** the final decision of the Commissioner. The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented parties.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 8, 2006


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE